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NEW DELHI, FRIDAY, MAY 29, 1953

ELECTION COMMISSION, INDIA

NOTIFICATION

New Delhi, the 16th May 1953

S.R.O. 1021.—Whereas the election of Shri Bashist Narain Sharma, as a member of the Legislative Assembly of the State of Uttar Pradesh, from the Ghazipur South East constituency of that Assembly, has been called in question by an Election Petition duly presented under Part VI of the Representation of the People Act, 1951 (XLIII of 1951), by Shri Deva Chanda, son of Shri Bindesari, Village and P.O. **Sherpur, District Ghazipur** and Shri Chandra Has, son of Shri Mukhrama, Village and P.O. **Gahmar, District Ghazipur** and Shri Bishwanath, son of Shri Maharaja, Village and P.O. **Gahmar, District Ghazipur**;

AND WHEREAS, the Election Tribunal appointed by the Election Commission, in pursuance of the provisions of Section 86 of the said Act, for the trial of the said Election Petition has, in pursuance of the provisions contained in section 103 of the said Act, sent a copy of its Order to the Commission;

NOW, THEREFORE, in pursuance of the provisions of Section 106 of the said Act, the Election Commission hereby publishes the said Order of the Tribunal.

BEFORE THE ELECTION TRIBUNAL, ALLAHABAD

PRESENT:

Sri V. G. Oak, I.C.S.—*Chairman.*

Sri N. N. Mukerji—*Member.*

Sri Babu Ram Avasthi—*Member.*

ELECTION PETITION No. 270 OF 1953

Deo Chand and others—*Petitioners.*

Vs.

Vashist Narain and others—*Respondents.*

JUDGMENT

This is an election petition by three persons, Deo Chand, Chandra Has and Vishwanath, challenging the election of Shri Vashisht Narayan Sharma to the U.P. State Legislative Assembly from Ghazipur (South-East) Constituency No. 345. The petitioner's case is that they are three electors in the said Constituency. The eight respondents were nominated as candidates for the election. Respondents Nos 6 to 8 withdrew their candidature, and respondents Nos. 1 to 5 continued the contest. After the poll Sri Vashisht Narayan Sharma, respondent No. 1, was found to have secured the largest number of votes. He was, therefore, declared elected from the Constituency. But the election of the respondent was vitiated by a

number of irregularities and illegalities in the conduct of the election, and corrupt and illegal practices committed by respondent No. 1. One of the candidates for election was Dudh Nath respondent No. 4, who is a resident of village Gahmar. But he personated another Dudh Nath, who is a resident of village Baruin. The nomination of Dudh Nath candidate was vitiated on account of this personation and fraud. Nevertheless, Dudh Nath's nomination was improperly accepted by the Returning Officer. The nomination papers of respondents Nos. 1 and 4 were not accompanied by separate declarations under section 33(3) of the Representation of the People Act 1951 (hereinafter referred to as the Act). These nomination papers were liable to be rejected. Counting of votes was irregular. The design of ballot boxes did not conform to rules. The arrangement of booths for female voters was unsatisfactory at several polling stations. An additional booth for females was created near the booth for male voters at Reotipur Polling Station without informing the voters. Consequently several female voters of Reotipur Polling Station went away without casting their votes. Several panches, sarpanches, sabhapatis, mukhiyas, assessors and licensees freely canvassed for respondent No. 1. Further, these men exercised undue influence over voters. This conduct amounted to violation of sections 123 & 124 of the Act, and Rule 61A of the Panchayat Raj Rules. The petitioners, therefore, prayed for a declaration that, the election of respondent No. 1, the returned candidate, is void, and that Sri Vireshwar Nath Rai, respondent No. 2, has been duly elected. In the alternative, it was prayed that it be declared that, the election is wholly void.

The petition was opposed by Sri Vashisht Narayan Sharma, respondent No. 1, the successful candidate. He pleaded that the petition does not comply with the provisions of section 81 of the Act, and is not maintainable because the petition has been filed by three persons, and the petitions include one candidate and two electors, and the petitioners deposited security of Rs. 1,000 instead of Rs. 3,000 for three petitioners. Respondent No. 1 denied that Dudh Nath respondent No. 4 personated for another Dudh Nath, as alleged by the petitioners. It was denied that the nomination of respondent No. 4 was improperly accepted. It was denied that the filing of nomination papers of respondents Nos. 1 and 4 was in any way defective. It was denied that the persons named in the list of particulars canvassed for respondent No. 1. In the alternative it was urged that, such canvassing by the said persons was not in violation of law. It was denied that polling arrangements were defective as alleged in paragraph 10(b) of the petition. It was also denied that the design of ballot boxes was defective, or that counting of votes was irregular. Respondent No. 1 urged that the alleged commission of corrupt practices ought to be condoned, because he had taken precautions to prevent the commission of such corrupt practices. Sri Vireshwar Nath Rai, respondent No. 2, appeared before us during the hearing of the petition, but did not file any written statement. Upon the pleadings contained in the election petition and the written statement of respondent No. 1, the following issues were framed:—

ISSUES

1. Whether the petition does not comply with the provisions of section 81 R.P. Act 1951, and is not maintainable owing to:

(a) The petition having been filed jointly by three electors instead of by 'an elector'.

(b) The fact that only one amount of Rs. 1,000 has been deposited as security instead of an amount of Rs. 3,000 in view of three petitioners having joined in the petition.

(c) The fact that one candidate and two electors have joined as petitioners.

2. (a) Whether Dudh Nath respondent No. 4 personated another Dudh Nath as detailed in para. (7) of the petition?

(b) Was the nomination of respondent No. 4 improperly accepted?

(c) If the answer to (a) or (b) is in the affirmative, whether the result of the election was thereby materially affected?

3. (a) Whether the persons specified in the list attached to the petition were employed by, or worked for respondent No. 1 as his polling agents and canvassers? Did they exercise improper influence as detailed in paras. 8, 8(a) and 8(b) of the petition? If so, whether respondent No. 1 is guilty of commission of major and minor corrupt practices under section 123(2), (7) and (8) with explanation (b), section 124 and section 100(2) clauses (a) and (b) of R.P. Act 1951?

(b) Whether by employing panches, sar-panches, Presidents of Gaon Panchayats or Gaon Sabhas, licensees, assessors, village headmen, and Presidents of Panchayati Adalats specified in the list appended to the petition, respondent No. 1 is guilty of non-compliance with, and breach of, statutory rules within the meaning of section 100(2)(c) R.P. Act 1951 read with rule 61(a) of the Panchayat Raj Act Rules?

4. Whether respondent No. 1 is entitled to be condoned for major and minor corrupt practices proved against him for reasons given in para. (39) of his written statement?

5. Whether polling arrangements were defective as explained in para. 10(b) of the petition? If so, was the result of the election materially affected?

6. Whether counting of votes was defective as detailed in para. 10(a) of the petition? Was Rule 46 of R.P. Rules 1951 violated? If so, was the result of the election materially affected?

7. Whether the design of ballot boxes was defective as alleged in para. 10(c) of the petition? Was there a breach of Rule 56(l) of R.P. Rules 1951? If so, was the result of the election materially affected?

8. To what relief, if any, are the petitioners entitled?

9. Were the nomination papers of respondent Nos. 1 and 4 improperly accepted for reasons given in para. (9) of the petition?

FINDINGS

Issue No. 1.—The petition purports to have been filed by three electors of the Constituency, to which the election relates. Respondent No. 1 conceded that the three petitioners are electors in the Constituency. But it is pointed out that Chandra Has, petitioner No. 2, was also a candidate for the election. This fact has been admitted by the petitioners. That is why Chandra Has was again impleaded in the petition as respondent No. 7. The question for consideration is whether the filing of the petition by the three petitioners is regular.

Section 81 of the Act deals with the presentation of petitions. "An election petition calling in question any election may be presented ... by any candidate at such election or any elector ..." It was urged on behalf of the respondents that it is open to one candidate or one elector to file an election petition. But it is not open to two electors, or one candidate and one elector, to file a joint election petition. It is true that there is no specific provision in the Act for the filing of an election petition by two electors, or by a candidate and an elector. But there is Section 13 of the General Clause Act, 1897, which lays down that, "In all Central Acts, words in the singular shall include the plural". And the principle of Order 1, Rule 1, C.P.C. may be reasonably applied. It lays down that "All persons" may be joined in one suit as plaintiffs in whom any right to relief in respect of or arising out of the same act is alleged to exist whether jointly, severally or in the alternative where if such persons brought separate suits, any common question of law or fact would arise". Moreover Section 37 of the Act enables a Tribunal to consolidate two connected election petitions in respect of the same election. There is no material difference between the consolidation of two identical election petitions and the filing of one election petition by two or more electors or candidates. If two or more electors or candidates have to challenge an election petition on identical grounds, there is not much point in filing separate election petitions. In our opinion it is permissible for three electors to join as petitioners in an election petition. There can also be no objection if one candidate and two electors join in an election petition.

Section 117 of the Act deals with deposit of security. "The petitioner shall enclose with the petition a Government Treasury Receipt showing that a deposit of one thousand rupees has been made by him ... as security for the costs of the petition." It is true that the section requires the petitioner to deposit Rs. 1,000. But the section contemplates a deposit of Rs. 1,000 per petition. The object of demanding the security is to provide for costs of the petition. The costs of the petition would be the same whether the petition is filed by one person or by three persons. In our opinion it was sufficient for the three petitioners to deposit a sum of Rs. 1,000 as security under section 117 of the Act. The objections raised under clauses (a), (b) and (c) of this issue are without force. We decide issue No. 1 against respondent No. 1, and hold that the election petition is maintainable. It complies with the provisions of section 81, R.P. Act 1951.

Issue No. 2(a).—This issue relates to the nomination of Dudh Nath respondent No. 4. The petitioners' case is that Dudh Nath candidate in his nomination paper gave reference to another Dudh Nath of village Baruh. It is conceded on behalf of respondent No. 1 that there is another man Dudh Nath referred to in the petition. That Dudh Nath was produced before the Tribunal as D.W. 22. It is common ground that, Dudh Nath candidate is a permanent resident of village Gahmar, that he used to work as a teacher at Zamania High School, and that the second Dudh Nath is a Kahar by caste. It will be convenient to refer to the candidate as Dudh Nath Singh teacher, and to the second Dudh Nath as Dudh Nath

Kahar. In his nomination paper Dudh Nath candidate mentioned that, he was an elector shown at serial No. 593 in the electoral roll for village Baruin in Ghazipur (South-West) Constituency No. 346. According to the petitioners the entry at serial No. 593 relates to Dudh Nath Kahar. According to respondent No. 1, the entry relates to Dudh Nath Singh teacher. The entry in dispute runs thus:

<i>"Serial No.</i>	<i>House No. and name of village</i>	<i>Name</i>
593	167 Baruin	Dudh Nath
<i>Name of father or husband</i>	<i>Male or female.</i>	<i>Age</i>
Ram Krit	Male	31"

The entry contains particulars of Dudh Nath elector. In order to decide whether the entry relates to Dudh Nath Singh teacher or to Dudh Nath Kahar it is necessary to consider the full description of the two men.

Parties are agreed that Dudh Nath Singh teacher is a permanent resident of village Gahmar. In the nomination paper itself (Exs. A and 4) Dudh Nath candidate gave his address as village and post office Gahmar. But the respondent's contention is that the teacher had also a temporary residence at village Baruin. This position has not been accepted by the petitioners. The petitioners produced several witnesses including certain relations of Dudh Nath Kahar. Smt. Rachhi (R.W. 2) is Dudh Nath Kahar's father's mother. She said that no resident of Gahmar lives at Baruin. Ram Dhari Singh (P.W. 3) is a resident of Baruin. He said that Dudh Nath teacher rarely stays at Baruin. Mostly he goes away to village after school work. There are two railway stations between Gahmar and Zamania. The railway fare each way is about eight annas. The witness said that the teacher lives at Gahmar but teaches at Zamania. Ram Briksha Singh (P.W. 4) is President of the Gacn Sabha of Baruin. He said that Dudh Nath teacher does not live anywhere at Baruin. Ram Krit (P.W. 14) is the father of Dudh Nath Kahar. Ram Krit said that no Thakur of Gahmar lives in Ram Krit's house. The respondent also produced a few witnesses on the point. Pitambar Lal (D.W. 1) was formerly the patwari in circle Baruin. He said that Dudh Nath Singh teacher used to stay at a house belonging to Abdul Salam Khan and Inam Waris Khan at village Baruin. The patwari does not remember if he included the teacher's name in the electoral roll of Baruin. Vibhuti Narayan Lal (D.W. 4) is another teacher working in Zamania High School. He said that Baruin is at a distance of 16 miles from Gahmar. Dudh Nath Singh teacher stays at Baruin. Till 1952 Dudh Nath Singh used to live in a chhaoni of Salam Khan in village Baruin. D.W. 22 is Dudh Nath Kahar. He said that Dudh Nath Singh teacher used to live in Ram Krit's house. The teacher used to sleep at the chhaoni. Considering the distance between Baruin and Gahmar, it is difficult to believe that the teacher used to go every day from his school to his permanent house at Gahmar after school hours. We accept the respondent's contention that, Dudh Nath Singh teacher had a temporary residence at village Baruin near Zamania High School.

The next question for consideration is the parentage of Dudh Nath Singh teacher in the nomination form the parentage was given as 'Shivadeni alias Ram Krit'. According to respondent No. 1, the parentage given in Dudh Nath's nomination form is correct. According to the petitioners, the candidate's father was Shivadeni without any alias. P.W. 1 is Chandra Has petitioner. He said that Shivadeni had no alias. Chandra Has is also a resident of Gahmar. Shivadeni died 10 years back. Respondent No. 1 produced two witnesses to show that Shivadeni had an alias. These witnesses are Musafir Singh (D.W. 17), and Shyam Ali (D.W. 18). They are both residents of Gahmar. Musafir Singh is Dudh Nath Singh's cousin. He helped respondent No. 1 in the election, and is a congressman. He is an interested witness. Shyam Ali is an old man of 70 years. He said that he and Shivadeni were together at school. The witness admitted that in school records the name was written as Shivadeni Singh. The witness has no particular reason for remembering that, a man who died (according to the witness) 20 years ago was also known as Ram Krit Singh. Ex. H is an extract from a register of the school, where Dudh Nath Singh was working as a teacher. In Ex. H Dudh Nath Singh's parentage is written as simply 'Shivadeni'. There are on the record certain extracts of Khewats and Khataunis (Exs. 2, 3 and Ex. E). In all these papers the name recorded is 'Shivadeni'. Shivadeni was employed in the Railway Department. There is probably some record with the Railway Department giving Shivadeni's full description. Respondent No. 1 could not refer to a single document to show that, Shivadeni was ever recorded with an alias 'Ram Krit' before the filing of the nomination paper by Dudh Nath candidate. We reject the contention of respondent No. 1 that, Dudh Nath teacher's father Shivadeni had an alias Ram Krit.

Another consideration is the age of the teacher. Unfortunately neither party produced Dudh Nath Singh candidate before us. We have to rely upon evidence produced by the petitioners and respondent No. 1. The best evidence on the question of the teacher's age is the extract from the school register (Ex. H). In Ex. H the date of birth is noted as 1st September, 1906. The nomination paper was filed in November 1951. The candidate's age was then 45 years.

Now we proceed to consider the description of Dudh Nath Kahar. He appeared before us as D.W. 22. He gave his age as 28 years. The age given by Dudh Nath Kahar appears to be correct. As regards his residence, Smt Rachli (P.W. 2), said that Dudh Nath is now in Calcutta. On coming from Calcutta, Dudh Nath used to live at his house at Jamuan. Dudh Nath's father Ram Kirt (P.W. 14), said that Dudh Nath is now in Calcutta. On coming from Calcutta, Dudh Nath himself gave his residence as village Jamuan. He said that although his father Ram Kirt has been living at Baruin Dudh Nath and his wife live at Jamuan. Dudh Nath has a house but no cultivation at Jamuan. His wife works as a labourer there. Dudh Nath often lives in Calcutta for service. The petition, therefore, seems to be that, Dudh Nath Kahar's residence is at Jamuan, he often lives in Calcutta for service, but also frequently visits the village Baruin where his father Ram Kirt lives.

The entry in dispute is serial No. 593 in the electoral roll of village Baruin. The petitioners have filed extracts of other entries in the electoral roll of Baruin. These extracts are Exs. 94 and 95. The name of Ram Kirt son of Uchhahal Ram is shown against serial No. 594. The name of Rachli widow of Subhau is written against serial No. 595. The name of Badami wife of Ram Kirt is shown against serial No. 596. These entries just follow the entry in dispute (serial No. 593). It seems probable that all these entries relate to members of the same family. It is conceded on behalf of respondent No. 1 that, Dudh Nath Singh's family does not stay at Baruin.

Now we are in a position to decide whether the disputed entry relates to Dudh Nath Singh teacher or to Dudh Nath Kahar. The name in the entry is 'Dudh Nath'. The address is 'house No. 167 of village Baruin'. Since both the men are Dudh Nath with some sort of residence at village Baruin, the name and residence may apply to either of the two men. But the parentage is Ram Kirt. The parentage fits Dudh Nath Kahar but does not apply to the teacher. We have seen that the teacher's father was Shivdani without any *alias*. The age noted in the electoral roll is 31 years. We may assume that the electoral roll was prepared about the year 1949. In 1949 the teacher's age was 43 years and Dudh Nath Kahar's age was about 24 years. Thus the age given in the electoral roll was short of the teacher's age by 12 years, and exceeded Dudh Nath Kahar's age by 7 years. The entry in dispute is followed by other entries, which obviously relate to relations of Dudh Nath Kahar. The kutumb (family) register Ex. 5 also gives the names of all those members of this Kahar family. From all these considerations we are satisfied that the entry in dispute shown at serial No. 593 in the electoral roll of village Baruin relates to Dudh Nath Kahar and not to Dudh Nath Singh candidate.

It has been pointed out on behalf of respondent No. 1 that, apart from the entry in dispute, the teacher was an elector from his own village Gahmar. Ex. K is a copy from the relevant entry in the electoral roll of village Gahmar. That entry runs thus:

Serial No.	House No. and name of village	Name
5256	1400 Gahmar	Dudh Nath
	Name of father or husband	Male or female
	Shadoni	Male
		Age
		39"

Raghunayak Rai (D.W. 26), who is Vice-Chairman of the District Board, said that Dudh Nath Singh's house No. is 1400. Thus the teacher's description tallies with the description given in Ex. K. Respondent No. 1 has proved that Dudh Nath Singh candidate was an elector in village Gahmar. It was urged by Sri C. Khare, appearing for respondent No. 1 that the candidate had no reason to personate another Dudh Nath in view of the fact that the teacher was an elector in his own village Gahmar. It may be that the teacher was unaware of the entry Ex. K, when he filed the nomination paper on 24th November, 1951. Otherwise he would not have filed a copy of the electoral roll of Baruin which is in another constituency. That appears to be the reason why the teacher found it necessary to make use of his temporary residence at village Baruin.

In the nomination form (Ex-s. A and 4), the candidate gave his name as Dudh Nath, and not Dudh Nath Singh. The parentage given was Shivadeni *alias* Ram Krit. The age noted was 31 years. The address was village and post office Gahmar. Serial No 7 of the nomination paper was for the Constituency, in which the candidate is an elector. Here the candidate mentioned Gahmar (South-West), No. 346. Serial No. 8 of the form was for the serial number of the electoral roll. Here the candidate noted No. 593 of circle Baruin. The candidate must have known that his father's name was not Ram Krit, and that the candidate's age was not 31 years. Dudh Nath Singh made wrong entries against item Nos. 7 and 8 in the nomination paper in order to make it appear that the candidate was Dudh Nath elector of Baruin. We hold that Dudh Nath respondent No. 4 personated Dudh Nath Kahar, as pleaded by the petitioners.

Respondent No. 2 filed an objection before the Returning Officer that the nomination of respondent No. 4 was invalid. But it was rejected by the Returning Officer. Hence it was argued on behalf of respondent No. 1 that, the petitioners are estopped from questioning the identity of Dudh Nath candidate, because Sri Vireshwar Nath Rai withdrew his objection before the Returning Officer. Reliance was placed upon the Returning Officer's order Ex. 1 and the contents of another objection Ex. J by another candidate Daroga Singh. Ex. 1 is the Returning Officer's order dated 27th November, 1951, relating to Dudh Nath's nomination. After mentioning the nature of the objection the Returning Officer wrote: "No proof was given in proof of this objection. Hence overruled." This order was signed the same day by Sri Vireshwar Nath Rai. The same day another candidate, Daroga Singh, presented a separate objection Ex. J. In Ex. J Daroga Singh wrote: "... I have come to know just now that Sri B. N. Rai is not willing to press or prove the objection. Sri B. N. Rai has no right to withdraw the objection" Daroga Singh's objection was also rejected by the Returning Officer on the ground that it was filed too late. No doubt Ex. J suggests that, Sri Vireshwar Nath Rai withdrew his objection. But on such application by Sri Vireshwar Nath Rai withdrawing his objection is on the file. In view of the wording of the order Ex. J, the respondent's oral evidence to the effect that Sri Vireshwar Nath Rai withdrew his objection cannot be accepted. Sri Vireshwar Nath Rai's objection was rejected simply on the ground that, no proof was forthcoming in support of the objection. It is not correct to say that, Sri Vireshwar Nath Rai withdrew his objection. He did not induce Sri Vashisht Narayan Sharma to file his nomination paper. So no question of estoppel arises. It is true that the election petition has been filed in the interest of respondent No. 2. But the three petitioners are entitled to challenge the election in their own right as electors of the Constituency. The plea of the petitioners that Dudh Nath candidate is not Dudh Nath elector mentioned in the nomination paper is not barred by the principle of estoppel.

Now we come to part (b) of issue No. 2. Sri A. P. Pandey appearing for the petitioners urged that, Dudh Nath's nomination paper was not properly presented as required by Section 33 of the Act, and the Returning Officer improperly accepted Dudh Nath's nomination. Section 33 of the Act deals with presentation of nomination paper and requirements for a valid nomination. Section 36 deals with scrutiny of nominations. Sub-Section (2) of Section 36 empowers the Returning Officer to reject nomination on a variety of grounds. Five grounds have been specified under clauses (a) to (e) of section 36(2). Clause (a) is, "that the candidate is not qualified to be chosen to fill the seat under the Constitution or this Act." We have seen that, although Dudh Nath Singh teacher was not an elector from Baruin, he was an elector in village Gahmar. As such, the candidate was qualified to fill the seat. There was no disqualification under clause (a) of section 36(2). Sri Pandey, however, relied upon clause (d) of section 36(2). Clause (d) is, "that there has been any failure to comply with any of the provisions of section 33 or section 34." It was urged that Dudh Nath Singh candidate failed to comply with the provisions of section 33(1).

No doubt Dudh Nath Singh filled up all the entries in his nomination form. But candidate shall deliver to the Returning Officer a nomination paper completed in the prescribed form. Sri S. C. Khare urged that Dudh Nath's nomination paper was completed in the prescribed form. This position was not accepted by Sri Pandey.

No doubt Dudh Nath Singh filled up all the entries in his nomination form. But we have seen that the entries made by him against serial numbers 3, 7 and 8 of the form were incorrect. The object of filling up the nomination form is to satisfy the Returning Officer (and perhaps also other candidates) about identity and

eligibility of the candidate for election. If the candidate is an elector from some other Constituency, the Returning Officer compares the entries of the nomination paper with the electoral roll of that Constituency in order to satisfy himself that the candidate is an elector in that Constituency. The words 'as completed in the prescribed form' necessarily imply that the entries must be true or substantially correct. Giving wrong particulars is worse than keeping the nomination paper blank. Dudh Nath Singh candidate gave wrong references in his nomination paper in order to pass off as Dudh Nath elector of village Barun. In view of the wrong particulars supplied, it cannot be said that the nomination paper was completed in the prescribed form. Sub-section (4) of section 36 states; "The Returning Officer shall not reject any nomination paper on the ground of any technical defect which is not of a substantial character." The defects in Dudh Nath Singh's nomination paper cannot be treated as technical defects. He deliberately gave wrong particulars in the nomination paper in order to mislead the Returning Officer. Dudh Nath Singh did not appear before us. We, therefore, do not wish to be severe upon him. But we cannot help remarking that, Dudh Nath Singh candidate deceived the Returning Officer. Had the Returning Officer been aware of the fraud, he could not accept the nomination. The Returning Officer cannot be blamed for accepting Dudh Nath Singh's nomination form. For, Sri Vireshwar Nath Rai did not produce evidence before the Returning Officer in support of the objection. But upon the material before us we have found that, there was a serious defect in Dudh Nath Singh's nomination paper. The nomination paper was not presented as prescribed by section 33(1) of the Act. The nomination should have been rejected under clause (d) of section 36(2). We hold that the nomination of respondent No. 4 was improperly accepted.

Issue No. 2(c).—The question now arises whether the result of the election has been materially affected as a result of improper acceptance of the nomination of respondent No. 4. According to section 100(i)(c) of the Act, the Tribunal has to declare the election to be wholly void if the result of the election has been materially affected by the improper acceptance or rejection of any nomination. Section 100(i)(c) contemplates three cases: (1) rejection of any nomination, (2) improper acceptance of the nomination of the returned candidate, and (3) improper acceptance of the nomination of any other candidate. There is ample authority in support of the proposition that in the case of the rejection of any nomination, a presumption arises that the result of the election is materially affected. For, in such a case the electors are deprived of an opportunity to return the candidate who was wrongly disqualified. In the second case also it is obvious that the result of the election is materially affected. For, in such cases voters were induced to return a candidate who was in fact disqualified. Such a situation arose in "Pyare Lal V. Amba Prasad" (Indian Election Petitions by Jagat Narayan, Volume IV page 4). It was found that nomination of the returned candidate Amba Prasad had been improperly accepted. The Election Commissioners observed:—"It is now well-settled that when the nomination paper of a candidate has been improperly rejected, the ordinary presumption is that the result of the election has been materially affected. Improper acceptance or refusal of a nomination paper by the Returning Officer in our view is so grave an irregularity that this presumption would require the strongest and most conclusive proof for its rebuttal, and it lies heavily on the respondent to rebut the presumption so raised. "Since the nomination paper of the returned candidate had been improperly accepted, there was really no difficulty in holding that the result of the election had been materially affected. If the observations just quoted were meant to apply to the case of the improper acceptance of the nomination of a candidate other than the returned candidate, the language was perhaps unduly wide. We agree with Sri S. C. Khare that, it is for the petitioners to prove that, the result of the election has been materially affected by the improper acceptance of the nomination.

In order to interpret section 100(i)(c) of the Act correctly, one has to find out the real meaning of the two expressions, 'result of the election' and 'materially affected'. The expression 'result of the election' is capable of two meanings. The expression may mean the declaration that a certain candidate has been duly elected. Or the expression may mean the result sheet mentioning the number of votes obtained by the various candidates. If the expression is understood in the first sense, it is difficult to understand how the result can be materially affected. The election of the returned candidate has either to stand or to fall. One cannot properly conceive of an intermediate stage. But the expression 'materially affected' suggests various grades of effects. In "Bellary Mohammadan Rural Constituency, 1947 case (Election cases by Sen and Poddar, page 136)" it was held that, the result of the election means the names of the candidates in the order of the poll with the number of votes polled for each, and that 'materially affected'

means that the majority of the returned candidate would have been materially reduced. We are inclined to accept this interpretation of clause (c) of section 100(i) of the Act.

The Tribunal has to decide upon evidence whether the result of the election has been materially affected as a result of improper acceptance of the nomination. In the present case respondent No. 1, who was the successful candidate, secured 12868 votes. Respondent No. 2 received 10996 votes. Dudh Nath respondent No. 4 got 1983 votes. The difference of votes captured by respondents Nos. 1 and 2 was 1872. It is to be noted that, the difference of votes received by respondents Nos. 1 and 2 was less than the votes received by Dudh Nath respondent No. 4. In "Bulandshahar District (East), 1921" (Hammond Election Cases, page 217) the Election Commissioners made calculation in order to find out the approximate number of votes that were likely to go to different candidates during the period for which voting had to be suspended.

Sri S. C. Khare placed strong reliance upon a decision of the Election Tribunal at Rewa dated 26th March 1953 in "*Udai Nath Singh v. Jagat Bahadur Singh*" (Election Petition No. 4/164 of 1952). In that case Jagat Bahadur Singh respondent No. 1 was the returned candidate. He received 6137 votes. It was found that Shiva Bahadur Singh respondent No. 2, who received 4317 votes, was not qualified for election. The Tribunal observed: ".....The petitioner must prove in this case that the respondent No. 1 would not have succeeded in the election if he (Raja Shiva Bahadur Singh), the disqualified candidate, respondent No. 2, was not in the field..... It may, therefore, be safely inferred that in the absence of respondent No. 2 his votes would have not gone on *en block* to respondent No. 3, but would certainly have been divided among the other candidates. The usual manner of distributing such votes is to act on the percentage of votes obtained by such candidates". We are not aware of any such general practice of distributing the wasted votes on percentage basis.

Sri A. P. Pande relied upon a decision of the Election Tribunal Bhagalpur, reported in the *Gazette of India Extraordinary*, dated 2nd February 1952 at page 233. There also the Tribunal had to find out whether the result of the election had been materially affected due to improper acceptance of the nomination. The Tribunal observed at page 242 as follows:—"If the number of votes secured by the candidate, whose nomination paper has been improperly accepted, is lower than the difference between the number of votes secured by the successful candidate and the candidate who has secured the next highest number of votes, it is easy to find that the result has not been materially affected. If, however, the number of votes secured by such a candidate is higher than the difference just mentioned, it is impossible to foresee what the result would have been if that candidate had not been in the field. It will neither be possible to say that the result would actually have been the same or different nor that it would have been in all probability the same or different". We respectfully agree. The principle lays down a sound working rule in deciding in such cases whether the result of the election has been materially affected as a result of improper acceptance of the nomination.

In such cases the Tribunal has to decide whether upon evidence the result of the election has been materially affected. If circumstances are such that it can be said with reasonable certainty that the returned candidate was bound to be elected even in the absence of the proved irregularity, the Tribunal may say so. But the Election Tribunal cannot usurp the functions of the electorate. It is for the electors to say whether this candidate or that candidate should be returned. An Election Tribunal is not entitled to substitute its judgment for the wishes of the electorate. In the present case we have seen that Dudh Nath respondent No. 4 received 1983 votes, and the difference of votes of respondents Nos. 1 and 2 was 1872. Sri S. C. Khare argued that even if respondent No. 1 had received only 56 out of Dudh Nath's 1983 votes, respondent No. 1 was sure to get elected. The argument is sound so far as it goes. But how can we be sure that respondent No. 1 was bound to get at least 56 out of Dudh Nath's 1983 votes? Chandra Has (P.W. 1) said that had Dudh Nath not been in the field, all those votes would have gone to respondent No. 2. On the other hand defence witnesses said that, Dudh Nath's votes would have gone to respondent No. 1. We are not impressed with this oral evidence about the probable fate of votes wasted on Dudh Nath Singh. Considering that Dudh Nath respondent No. 4 received more votes than the margin of votes by which respondent No. 1 was returned we are constrained to hold that there was a reasonable possibility of respondent No. 2 being elected

in place of respondent No. 1 had Dudh Nath Singh not been in the field. We hold that the result of the election was materially affected due to improper acceptance of the nomination of respondent No. 4.

Issue No. 3(a).—The allegation under this Issue is that several persons, such as village panches, mukhiyas etc., who were disqualified under section 123(8) of the Act, canvassed for respondent No. 1. Section 123 of the Act contains a list of major corrupt practices. Section 123(8) states:—"The obtaining or procuring or abetting or attempting to obtain.....any assistance for the furtherance of the prospects of the candidate's election from any person serving under the Government of India or the Government of any State other than the giving of votes by such person".

Explanation.—For the purposes of this clause.....(b) a person serving under the Government of any State shall include a patwari, chaukidar, defedar, Zaildar, shanbagh, karnam, talati, talari, patil, village munsif, village headman or any other village officer, by whatever name he is called, employed in that State, whether the office he holds is whole-time office or not,.....". The question for decision is whether panches, mukhiyas etc. come within the prohibited class defined by section 123(8).

The prohibition under consideration is with respect to "any person serving under the Government of India or the Government of any State." This expression roughly corresponds to the common phrase "Government servant". The expression "Government servant" usually implies two things: (a) appointment and control by Government, and (b) relationship of employer and employee with remuneration. The principle underlying section 123(8) appears to be this. The Legislature was anxious to secure fair elections. Government servants are likely to come under the influence of the party which happens to be in power at the moment. It was, therefore, considered expedient to prohibit Government servants from taking part in elections.

Clause (b) of the explanation to section 123 (8) of the Act contains a long list of village officers. The question for decision is whether panches, mukhiyas etc. are village officers within the meaning of clause (b). Sri S. C. Khare referred to local Laws of different States in India in order to show that, some sort of remuneration is attached to every office named in clause (b). For example, section 16 of the Bombay Land Revenue Code, 1879 mentions stipendiary Patels. Section 28 of the Punjab Land Revenue Act of 1887 refers to payment to be made by Government to Zaildars. It is well known that Patwaris and Chaukidars in U.P. are paid by Government. The question was raised why it was necessary at all to mention the patwari and the chaukidar in the explanation. For, they are obviously Government servants. It may be that no doubt about patwaris and chaukidars was likely to arise in Uttar Pradesh. But conditions of service of patwaris and chaukidars in other States may be different. It was made clear in clause (b) that it was immaterial whether service is wholetime or not.

The term "village headman" used in clause (b) creates some difficulty. Sri A. P. Pande urged that Mukhiyas are village headmen. But Sri S. C. Khare argued that mukhiyas of U.P. are not village headmen. Section 45 Cr. P.C. lays down that, village headmen, accountants etc. are bound to report certain matters to the police. Section 45(3) Cr. P. C. states: ".....The District Magistrate or Sub-Divisional Magistrate may from time to time appoint one or more persons, with his or their consent, to perform the duties of a village headman under this section whether a village headman has or has not been appointed for that village under any other law." U.P. Government has made certain Rules on the subject. According to paragraph 1099 of the Manual of Government Orders, the District Magistrate shall appoint one or more village headmen for the purpose of section 45 Cr. P. C. in each inhabited village in his district. Parties were agreed that, persons appointed by the District Magistrate under paragraph 1099 of the Manual of Government Orders are commonly known in U.P. as Mukhiyas. It is, therefore, fairly clear that a Mukhiya of U.P. is a village headman for purposes of section 45 Cr. P. C.

But Sri S. C. Khare argued that Mukhiyas are not village headmen for the purposes of section 123(8) of the Act. The language of section 45 Cr. P. C. suggests that, village headmen might be appointed under laws other than the Code of Criminal Procedure. In "*Abdul Rauf vs. Makhtar Ali*" (*Gazette of India Extraordinary* dated 5th January 1953, page 7) the Election Tribunal had to deal with Gaonburahs of Assam. The Tribunal found that a Gaonburah is really a village headman employed by the Government of Assam for performing some public duties. He is a person serving under the Government, and that for consideration received in the shape of revenue remission for some land held by him. Similarly in *Lahri Singh vs. Attar Singh* (*Gazette of India Extraordinary*, dated 5th February 1953, page 315) the Election Tribunal observed that, a Lambardar was a village headman according to the connotation of that term in PEPFU. It is to

be remembered that the Representation of the People Act, 1951 is Act passed by the Parliament for the whole of India. The expression "village headman" appearing in clause (b) of section 123(8) of the Act must have been used in a general sense, and not in the restricted sense of a Mukhiya of U.P. It was conceded that, Mukhiyas of U.P. do not receive any remuneration from the Government. But there is reason to believe that village headmen in other parts of India receive some kind of remuneration.

After specifying a number of posts, clause (b) proceeds—"or any other village officer, by whatever name he is called, employed in that State". Sri Pande argued that the offices of Panches, Mukhiyas etc. are covered by the general expression "any other officer, by whatever name he is called, employed in that State". Under explanation (b) every village officer is not disqualified. The disqualification attaches to only those village officers who are employed in that State. The expression "employed in the State" raised a certain amount of controversy. In the Concise Oxford Dictionary the meaning of the verb "to employ" is given as follows:—

"Use (thing, one's power, etc. for, in, on, about, an object); use services of (person); keep (person) in one's service; busy, keep occupied (oneself, others, doing, in etc.)." Sometimes the verb "to employ" is used to denote keeping occupied. But the primary meaning of the verb "to employ" appears to be to keep a person in one's service. It is to be remembered that the expression "employed in that State" appears in an explanation. Sri A. P. Pande argued that, explanation may enlarge the scope of the main section. But the object of an explanation in a statute is to clarify the meaning of obscure or doubtful language of the main section. Clause (b) of the explanation itself opens with the words "a person serving under the Government of any State shall include". Thus the context suggests that, the expression "serving under the Government of any State" and "employed in that State" are analogous expressions. So the expression "employed in that State" should be taken in the sense of service under Government. It, therefore, appears that the prohibition contained in section 123 (8) and clause (b) of the explanation is confined to Government servants. We have seen that mukhiyas of U.P. receive no remuneration from Government. Mukhiyas cannot, therefore, be classed as Government servants. They do not come within the prohibition of section 123(8).

Now we have to see whether village panches are within the prohibited class. For this purpose it becomes necessary to examine the provisions of the U.P. Panchayat Raj Act, 1947. Section 4 of the Act provides for incorporation of Gaon Sabhas. The Gaon Sabha elects a President under section 11 of that Act. Gaon Panchayats are formed under section 12 of that Act by election. Section 128 of that Act lays down that every member of a Panchayati Adalat or a Gaon Panchayat shall be deemed to be a public servant within the meaning of section 21 of the Indian Penal Code. It is true that under section 28 U.P. Panchayat Raj Act, Panches have been declared to be public servants. But it does not follow that they must be Government servants. The expression "public servant" has been defined in section 21 I.P.C., while the expression "servant of Government" has been defined in section 14 I.P.C. Section 14 I.P.C. states: "The words 'servant of Government' denote any officer or servant continued, appointed or employed, in India by or under the authority of Government". It has been seen that, Panches are elected and not appointed by Government. They receive no remuneration. They cannot, therefore, be considered to be Government servants. The same remark applies to Sabhapatis.

In *Bijai Singh vs Narbada Charan Lal* (Gazette of India Extraordinary, dated 6th January 1953, page 29) it was held by the Election Tribunal, Bhopal that, an assessor does not hold any office under Government. An assessor attends the Sessions Court to assist in the trial of cases. No doubt he receives some payment from the court to compensate him for the loss of his time. But this payment cannot be treated as salary paid by Government. It is merely an allowance to compensate him for the loss of his time. We agree with the Election Tribunal, Bhopal that, an assessor is not a person serving under Government. Similarly it may be shown that, a licensee is not a Government servant. Frequently, a shopkeeper receives a license from Government for selling cloth, grain etc. But such licence does not make the shopkeeper a Government servant. We, therefore hold that a Mukhiya, a Sabhapati, a Panch, an Assessor, or a licensee is not a person serving under the Government of India or the Government of any State for purposes of section 123(8) R.P. Act, 1951.

Petitioners produced a good deal of evidence to show that several Mukhiyas, Panches and Sabhapatis canvassed for respondent No. 1. We have shown that, such canvassing is not prohibited by section 123(8) of the Act. So, for purpose of issue No. 3(a), it is not necessary to decide the question whether these persons indulged in canvassing for Respondent No. 1, as alleged by the petitioners. The petitioners also alleged that these persons exercised undue influence on voters. For

example, Ram Prasad Tewari (P.W. 18) said that, certain persons brought pressure upon voters to vote for Vashisht Narayan. This evidence about alleged undue influence by village officials is not reliable. Since the commission of any corrupt or illegal practice has not been proved, clauses (a) and (b) of sub-section (2) of section 100 of the Act have no application. We decide part (a) of issue No. 3 against the petitioners.

Issue No. 3(b).—Under this Issue we have to consider whether respondent No. 1 has violated rule 61-A of the Panchayat Raj Rules. Rule 61-A lays down that “.....no Sarpanch or Panch shall take part in any election to a local body other than a Gaon Panchayat of Panchayati Adalat, or to the State Legislature in any area within his jurisdiction otherwise than by casting his own vote as an elector.” This rule has been made by the State Government under section 110 of U.P. Panchayat Raj Act. Sri S. C. Khare argued that Rule 61-A is *ultra vires* the State Government.

In support of this contention Sri Khare referred us to a decision of the Allahabad High Court dated 20th November 1951 upon a writ application (Ram Nath Dube vs. the State of U.P.—Civil Miscellaneous No. 7905 of 1951). In that case the High Court had to consider the validity of Rule 12 of the Municipal Servants' Conduct Regulations. Rule 12 ran thus: “Election to a local authority, a Panchayati Adalat or Legislative Bodies. —A municipal servant shall not, by canvassing or otherwise, interfere or in any way, use his influence in connection with, or stand as a candidate, in any election to a local authority or a Panchayati Adalat or a Legislative Body, or continue to be an elected member of office thereof, but may vote in such an election, if qualified to do so, in which case he shall avoid giving any indication of the manner in which he proposes to vote or has voted”. The High Court held that the State Government was not competent to make the rule. Rule 12 purported to have been made by the State Government under the powers conferred upon it by section 296 of the U.P. Municipalities Act, 1916. Section 296 of the U.P. Municipalities Act states :“(1) The State Government shall make rules consistent with this Act in respect of the matter described in sections 20, 44A, 44A, 95, 127, 153, 235, and 248. (2) The State Government may make rules consistent with this Act (a) providing for any matter for which power to make provision is conferred expressly or by implication on the State Government by this or any other enactment in force at the commencement of this Act, and (b) generally for guidance of a Board or any Government officer in any matter connected with the carrying out of the provisions of this or any other enactment relating to Municipalities.” Rule 61-A now in dispute was framed by the State Government under section 110 of the U.P. Panchayat Raj Act. Section 110(1) of the U.P. Panchayat Raj Act states: “The State Government may, subject to the condition of previous publication by notification in the official gazette, make rules consistent with this Act to carry out the purposes of this Act”. On comparing the language of Section 110 of the U.P. Panchayat Raj Act with the language of section 296 U.P. Municipalities Act, one finds that the power conferred upon the State Government under section 110 of the U.P. Panchayat Raj Act is somewhat wider than the power conferred by section 296 of the U.P. Municipalities Act. Under section 110 U.P. Panchayat Raj Act the State Government may make any rule consistent with the Act to carry out the purposes of the Act. One may not agree with the principle of Rule 61-A. But the rule cannot be declared invalid on the ground of unreasonableness. The rule is not inconsistent with the Act. The State Government might have felt that it was not proper for a member of a Panchayati Adalat to indulge in party politics. In making rule 61-A the State Government did not exceed the power conferred upon it by section 110 U.P. Panchayat Raj Act.

Sri Khare referred to Articles 327 and 328 of the Constitution. Article 327 deals with the power of Parliament to make provisions with respect to elections to Legislatures. Article 328 deals with the power of a Legislature of a State to make provisions with respect to elections to such legislature. Article 328 states: “Subject to the provisions of this Constitution, and in so far as provision in that behalf is not made by a Parliament, the Legislature of a State may from time to time by law make provision with respect to all matters relating to, or in connection with the elections to the House or either House of the Legislature of the State.....”. This article clearly recognises the power of a State Legislature relating to election matters. Under section 123(8) R.P. Act, 1951, Parliament made a law prohibiting Government servants from taking part in elections. But we have already seen that, section 123(8) of the Act does not touch Panches of village Panchayats. It was, therefore open to the State Legislature to make a law prohibiting Panches from taking part in elections to the State Legislature. Under section 110 U.P. Panchayat Raj Act the State Legislature authorised the State Government to make rules consistent with the Act to carry out the purposes of the Act. By implication the Legislature authorised the State Government to make provision for efficient administration of Panchayati Adalats. We are of opinion that, Rule 61-A of the U.P. Panchayat Raj Rules is not *ultra vires* the State Government.

For purposes of this Issue it is not necessary to consider the alleged canvassing by Mukhiyas and Sabhapatis. It will be sufficient to consider the evidence led by petitioners to show that, certain Panches canvassed for respondent No. 1. Evidence has been produced to prove canvassing by ten Panches. Digendra Mohan (P.W. 12) and Jagdish Chandra Pande (P.W. 15) gave evidence about canvassing by Ram Dhari Pande, who is a member of a Panchayati Adalat. Ex. 57 is polling agent form showing that Ram Dhari Pande worked as polling agent. Mangal Prasad Rai (P.W. 9) deposed that Yadunath Rai, who is a Panch of Sohwal Panchayati Adalat, canvassed for Vashisht Narayan. To the same effect is the statement of Udai Narayan Rai (P.W. 16). Ex. 66 is the polling agent form Panna Lal Rai (D.W. 2) said that he did not find Yadunath Rai canvassing for Vashisht Narayan. Ram Prasad Tewari (P.W. 18) stated that Sri Ram Singh was Vashisht Narayan's polling agent. Ex. 82 is the polling agent form. Durga Dutt Tewari (D.W. 6) stated that Sri Ram Singh of Yuvarajpur did not work for Vashisht Narayan at the polling station. Udai Narayan Rai (P.W. 16) and Sarat Chand Rai (P.W. 19) deposed that Sarbjeet Rai, who is a Panch of Adalati Panchayat, canvassed for Vashisht Narayan. Ex. 74 is the polling agent form. All these Panches were named in the list of particulars attached with the election petition. The petitioners have proved the polling agent forms. There is sufficient evidence to prove that Ram Dhari Pande, Yadunath Rai, Sri Ram Singh and Sarbjeet Rai canvassed for respondent No. 1.

Ram Prasad Tewari (P.W. 18) stated that Indradeo Singh and Ram Dulare Singh worked as Vashisht Narayan's polling agents. Exs. 84 and 85 are the two polling agent forms. It is true that names of the two Panches were not mentioned in the list of particulars. But Ram Prasad Tewari's evidence on the point appears to be true. The petitioners have also proved the canvassing by Indradeo Singh and Ram Dulare Singh panches.

Sukhdeo Singh (P.W. 20) said that Baleshwar Rai Panch helped Vashisht Narayan in the election. Ex. 65 is the polling agent form. Sukhdeo Singh worked for Vireshwar Nath Rai in the election, and is an interested witness. Bindeshvari Prasad (P.W. 10) stated that Bishambhar is a Panch of Adalati Panchayat and Banarsi Pande is a member of the Gaon Sabha. These men canvassed for Vashisht Narayan. The witness remains mostly at Ghazipur where he is in service. Digendra Mohan (P.W. 12) stated that Jagdish Singh worked as Vashisht Narayan's polling agent, at Utraul. This witness has given evidence against a number of persons. The names of these four persons were not mentioned in the list of particulars. The petitioners' evidence about the alleged canvassing by Baleshwar Rai Bishambhar, Banarsi Pande and Jagdish Singh is not satisfactory.

The petitioners have proved that, certain Panches worked as polling agents for respondent No. 1. It was argued for respondent No. 1 that, working as a polling agent does not amount to assistance contemplated by Rule 61-A U.P. Panchayat Raj Rules. We do not agree. It may be that a polling agent is sometimes of help to the Presiding Officer of the polling station. But that is not the main task of the polling agent. The primary object of a polling agent is to safeguard the interest of his principal, at the polling station. The polling agent watches whether the polling arrangements are satisfactory, whether his candidate's supporters are getting facility to cast their votes, and whether fictitious votes are being cast in the ballot boxes of rival candidates. There is, therefore, no doubt, that, a polling agent assists the candidate for whom he is working.

Section 100(2) (c) R.P. Act 1951 states: ".....If the Tribunal is of opinion that the result of the election has been materially affected.....by any non-compliance with the provision.....of any rules or orders made under this Act or of any other Act or Rules relating to the election....., the Tribunal shall declare the election of the returned candidate to be void". Under Section 100(2) (c) it is not enough to show that, any rule has been violated. The petitioners have further to show that, the result of the election has been materially affected by such non-compliance with the rule. In the present case the petitioners have proved that certain Panches canvassed for respondent No. 1, and worked as his polling agents. This conduct amounted to a breach of Rule 61-A of U.P. Panchayat Raj Rules. But the petitioners have not shown to what extent this irregularity affected the result of the election. We are prepared to assume that, the canvassing by the six Panches influenced a few voters. But it is not enough to show that there was some effect of the canvassing. The petitioners have to show that the result of the election was materially affected. If polling is conducted in a regular manner, the working by a polling agent may not affect the election at all. So our finding on this Issue is that, although there was a breach of rule 61-A of the Panchayat Raj Rules, it has not been proved under section 100(2) (c) of the Representation of the People Act 1951 that the result of the election was materially affected due to non-compliance with Rule 61-A.

Issue No. 4.—Since major or minor practices have not been proved against respondent No. 1, no question of condoning such practices arises.

Issue No. 5.—This Issue relates to the arrangements for female voters at polling station Reotipur. According to Ram Ball (P.W. 17), Sukhdeo Singh (P.W. 20) and Smt. Rama Devi (P.W. 21), polling arrangement was not satisfactory. Late in the day a new female booth was opened near the male booth without informing the female voters. So several female voters went away without casting their votes. Ram Ball (P.W. 17) was not a voter in the Constituency. He had no particular reason for going to the polling station. Sukhdeo Singh (P.W. 20) was working for Vireshwar Nath Rai in the election at Reotipur. Similarly Smt. Rama Devi (P.W. 21) was working for Vireshwar Nath Rai. These two persons are interested witnesses. Nageshwar Rai (D.W. 13) worked as a polling clerk at the female booth of Reotipur polling station. He does not know if a new booth was opened for female voters. Sri Raghu Nayak Rai (D.W. 26) is the Vice-Chairman of the District Board. He said that it is wrong that he suggested to the Presiding Officer about any alteration in female booths. The petitioners did not produce the Presiding Officer or any other polling officer of Reotipur polling station in order to prove that, a new polling booth was opened for females near the male booth. Petitioners' witnesses said that female voters went away after 2 P.M. Polling remained open till 5 P.M. If certain female voters chose not to vote between 2 and 5 P.M., it cannot be said that polling arrangements were unsatisfactory. The petitioners have failed to prove that, polling arrangements at Reotipur polling station were defective, or that the result of the election was materially affected as a consequence of the alleged defect. The Issue is decided against the petitioners.

Issues Nos. 6 and 7.—These two Issues were not pressed on behalf of the petitioners. The two Issues are decided against the petitioners.

Issue No. 9.—The question raised under this Issue relates to the nomination papers of respondents Nos. 1 and 4. Reference was made to section 33(3) of the Act which runs thus: "Every nomination paper delivered under sub-section (1) shall be accompanied by a declaration in writing subscribed by the candidate that the candidate has appointed as his election agent for the election either himself or another person.....and who shall be named in the declaration, and by such other declarations, if any, as may be prescribed; and no candidate shall be deemed to be duly nominated unless such declaration is, or all such declaration are, delivered along with the nomination paper". The form of nomination paper has been prescribed in schedule 2 of R.P. Rules, 1951. This form provides for a reference to the appointment of election agent. Under this entry respondent No. 1 mentioned that he had appointed himself as his election agent. It is of course permissible for a candidate to appoint himself as his election agent. But the question has been raised whether the appointment should be in the nomination paper itself or separately. Section 33(3) of the Act lays down that, the nomination paper shall be accompanied by a declaration about the election agent. Further, such declaration has to be delivered along with the nomination paper. The language of section 33(3) shows that, there should be a separate declaration in addition to the nomination paper. Respondent No. 1 filed certain forms, which purport to be declarations appointing himself as polling agent. The signatures on these forms of appointment of election agent have not been proved. But they appear to have been filed before the Returning Officer on 24th November 1951. The nomination paper of respondent No. 1 was also filed on the same day. We, therefore, take it that the necessary declarations were delivered along with the nomination papers of respondent No. 1, as prescribed by section 33(3).

As regards the nomination paper of respondent No. 4, the position is slightly different. Ex. A is a copy of the nomination paper of respondent No. 4. At the bottom of page one of this form we find an entry relating to the appointment of an election agent. The form provides for the appointment of some other person, or the candidate himself in the alternative. But neither of these two alternatives has been cancelled in Ex. A. The form does not, therefore, show whether Dudh Nath appointed himself or anybody else as his election agent. There is no separate declaration contemplated by section 33(3). It appears that Dudh Nath's nomination paper was not filed as required by section 33(3).

But section 36(4) enables the Returning Officer to condone technical defects. It has not been shown that the irregularity committed by Dudh Nath candidate has prejudiced any other candidate on merits. We, therefore, hold that so far as the requirements of sub-section (3) of section 33 of the Act is concerned, there was no defect relating to the nomination papers of respondent No. 1, that there was irregularity relating to the nomination paper of respondent No. 4, but the irregularity could be cured under sub-section (4) of section 36 of the Act. This Issue is decided against the petitioners.

Issue No. 8.—We have found under Issue No. 2 that the nomination of respondent No. 4 was improperly accepted, and that the result of the election was thereby materially affected. The present case, therefore, falls under clause (c) of section 100(1), R.P. Act, 1951. This Tribunal must, therefore, declare the election to be wholly void. Since the election is wholly void, there is no question of our declaring that respondent No. 2 has been duly elected. There must be re-election in the Constituency.

As regards costs, we note that the election is being declared void, because the nomination of respondent No. 4 was defective. Sri Vireshwar Nath Rai, respondent No. 2, raised an objection before the Returning Officer, but did not adduce evidence before him in support of the objection. Respondent No. 1 has supported the nomination of respondent No. 4 as valid nomination throughout the hearing of the election petition. In these circumstances we decide that respondent No. 1 should be ordered to pay the petitioners Rs. 500 towards their costs.

ORDER

The election petition is allowed. Under section 100(1)(c), R.P. Act, 1951, we declare the election to the U.P. State Legislative Assembly from Ghazipur (South-East) Constituency, Ghazipur No. 345, held in January and February 1952, to be wholly void. The seat in the U.P. Legislative Assembly from this Constituency is still lying vacant.

Under section 99, R.P. Act, 1951, it is declared that no corrupt or illegal practice has been proved against respondent No. 1.

We direct that Sri Vashisht Narayan Sharma shall pay the petitioners Rs. 500 as costs. The respondents shall bear their own costs. The petitioners are entitled to get refund of their security deposit of Rs. 1,000.

(Sd.) V. G. OAK I.C.S., *Chairman.*

(Sd.) N. N. MUKERJI, *Member.*

(Sd.) B. R. AVASTHI, *Member.*

The 4th May, 1953.

[No. 19/270/52-Elec.III/7077.]

By Order,

P. R. KRISHNAMURTHY, *Asstt. Secy.*